



January 28, 2019

The Honorable Brian M. Cogan
United States District Judge
for the Eastern District of New York
225 Cadman Plaza East
Brooklyn, NY 11201

Re: *United States v. Joaquín Archivaldo Guzmán Loera*
Case No. 09-CR-0466(S-4)(BMC)

Dear Judge Cogan:

I respectfully write to request that the Court include the following language in its charge to the jury:

In this case, the defendant contends that the government's proof fails to show the existence of the conspiracies charged. Rather, defendant contends that the government's proof at most establishes the existence of several separate and independent conspiracies.

Whether there existed a single unlawful agreement, or many such agreements, or indeed, no agreement at all, is a question of fact for you, the jury, to determine in accordance with the instructions I am about to give you.

With respect to each conspiracy charge, you must decide whether the government has proven the specific conspiracy charged in the count you are considering. In other words, did the proof establish the existence of a single conspiracy or did the proof establish more than one or several conspiracies?

Proof of several separate and independent conspiracies is not proof of any one conspiracy charged in the Indictment, unless one of the conspiracies proven is the specific conspiracy charged in a count in the Indictment. In connection with your consideration of the conspiracies charged in the Indictment, there is no requirement that the persons with whom the defendant conspired be named in the Indictment. The language in the charged conspiracies, "together with others," permits you to consider the possible participation of another or others not named in the Indictment.

Where persons join together to further a common unlawful design or purpose, a single conspiracy exists. By way of contrast, multiple conspiracies exist when there are separate unlawful agreements to achieve distinct purposes.

You may find a single conspiracy despite the fact that there were changes in either personnel, or activities, or both, so long as you find that some of the co-conspirators continued to act for the entire duration of the conspiracy for the specific purpose charged in that count of the Indictment. Moreover, the fact that the parties are not always identical does not necessarily imply that separate conspiracies existed. A single conspiracy is not transposed into multiple ones simply by a lapse of time, changes in membership, or a shift in the locale of operations. However, the fact that the criminal conduct by various persons was the same over time, *e.g.*, sale of narcotics, does not necessarily mean that all such conduct was undertaken as part of a single conspiracy. You will need to consider each of the conspiracies charged in turn.

If the government fails to prove the existence of one of the conspiracies charged, you must of course acquit the defendant with respect to that particular conspiracy count. If, however, the government proves the existence of the specific conspiracy charged in a particular count, you must decide whether a defendant knowingly and willfully joined that conspiracy and all essential elements of the offense about which I have instructed you.

This language is modified from *Sands & Siffert* and was given by the Honorable Raymond J. Dearie, in a one-defendant trial, *United States v. Carlos Patino Restrepo*, 02-CR-1188. Mr. Guzmán requests that this language be inserted before the last paragraph of the conspiracy charge on page 28.

Thank you for your consideration of this request.

Respectfully submitted,

/s/

A. Eduardo Balarezo

cc: The parties via ECF